

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SCA:LN:TL-N-4478-00
JMMarr

date: OCT -5 2000

to: [REDACTED], [REDACTED] Manager, [REDACTED]
[REDACTED], [REDACTED] Team Coordinator, [REDACTED]

from: Joyce M. Marr, Attorney
June Y. Bass, Assistant District Counsel
District Counsel, Southern California District, Laguna Niguel

subject: [REDACTED]
Form 872 for [REDACTED]
EIN: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This is in response to your oral request for advice as to the proper party to execute a Consent to Extend the Time to Assess Tax (Form 872) to extend the statute of limitations for the short period beginning on [REDACTED], and ending on [REDACTED].

Issue

How should a Form 872 to be secured to extend the time to assess income tax against the [REDACTED]

[REDACTED] consolidated group for the short period ended [REDACTED], be prepared?

Conclusion

So long as [REDACTED] is still in existence when the Form 872 is executed on behalf of both the Internal Revenue Service and [REDACTED] for the [REDACTED] consolidated group for the taxable period ended [REDACTED], then [REDACTED] is the proper party to execute the Form 872. The Form 872 should be captioned as follows: "[REDACTED] (EIN: [REDACTED]) *." On the bottom of the form, you should add the following: "*With respect to the consolidated tax liability of the [REDACTED] consolidated group for the group's taxable period ended [REDACTED]."

Since the requirements of I.R.C. § 6501(c)(4)(B) pertaining to giving the taxpayer notification of certain rights must be satisfied, please ensure that the statute extension is requested by Form Letter 907(DO) (Rev. 2-2000), Letter 907(SC) (Rev. 12-1999) or Letter 967 (Rev. 12-1999).

Facts¹

[REDACTED] (EIN [REDACTED]) filed a consolidated income tax return for the short period beginning on [REDACTED], and ending on [REDACTED]. On this short-period return, [REDACTED] stated that it was incorporated on [REDACTED]. Thus, this was the initial return filed by [REDACTED].

[REDACTED] included [REDACTED] (EIN [REDACTED]) on the Affiliations Schedule (Form 851) for the consolidated return it filed for the short period ended [REDACTED]. [REDACTED] also included [REDACTED] (EIN [REDACTED]) on the Affiliations Schedule for a short-period return filed by it for the tax year beginning [REDACTED], and ending [REDACTED].

¹Our understanding of the facts of this case is limited to information that the Examination Division has provided to us. If you learn that any of the facts known to us are incorrect or incomplete in any material respect, you should contact our office immediately.

[REDACTED] was an indirect subsidiary of [REDACTED], a [REDACTED] corporation which is the ultimate parent of a large multinational group of companies. On [REDACTED] as part of an internal reorganization of the [REDACTED] group corporate structure, all of the shares of [REDACTED] were transferred to [REDACTED], a Delaware corporation.

On the Affiliations Schedule for [REDACTED]'s [REDACTED] consolidated income tax return, [REDACTED] included [REDACTED] (EIN [REDACTED]) and [REDACTED] (EIN [REDACTED]).

As of [REDACTED], [REDACTED] was still in existence. You have forwarded to us an article, however, which appeared in "The [REDACTED] Register" on [REDACTED], which indicates a pending acquisition of [REDACTED] by [REDACTED] was subject to regulatory approval before it could become final. The article does not indicate whether [REDACTED] will cease to exist if the acquisition is completed. As of [REDACTED]'s proposed acquisition of [REDACTED] had not yet been completed and the Examination Division had not yet been able to secure any information concerning whether [REDACTED] will ultimately be terminated if the acquisition is completed.

Discussion

I.R.C. § 1501 grants affiliated groups of corporations the privilege of filing returns on a consolidated basis. If consolidated returns are filed, the members of the group consent to be bound by the legislative regulations promulgated under the authority of I.R.C. § 1502. I.R.C. § 1501.

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the consolidated group, duly authorized to act in its own name, in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a).


Where the common parent remains in existence, even if it no longer is the common parent, it has the authority under Treas. Reg. § 1.1502-77(a) to execute Forms 872 with respect to its consolidated group for the taxable periods during which it was

acting as common parent.² Id.; Treas. Reg. § 1.1502-77T; and Union Oil v. Commissioner, 101 T.C. 130 (1993).

Thus, so long as [REDACTED] is still in existence, it is the proper party under Treas. Reg. § 1.1502-77(a) to execute the Form 872 for the [REDACTED] consolidated group for the short period ended [REDACTED].

The Form 872 should be captioned as follows: "[REDACTED] (EIN: [REDACTED])*." On the bottom of the Form, you should place an asterisk and right after it type: "With respect to the consolidated tax liability of the [REDACTED] (EIN: [REDACTED]) [REDACTED] consolidated group for the group's taxable period ended [REDACTED]."

With the rendition of this advice, we are closing our file. Please contact the undersigned at telephone number (949) 360-2688 if you have any questions or comments concerning the foregoing.


JOYCE M. MARR
Attorney

²The holding in Interlake Corp. v. Commissioner, 112 T.C. 103 (1999) (former common parent's authority to act for the group, at least for the purposes of the issuance and receipt of tentative refunds, terminated when it was spun off and ceased to be a member of the group) in no way affects this conclusion. The instant case is distinguishable from Interlake since it involves a year subsequent to the effective date of Treas. Reg. § 1.1502-77T. Such regulation provides "alternative agents" for the consolidated group, for purposes of mailing notices of deficiency and executing waivers of the statute of limitations, where the common parent ceases to be the common parent of the group. It provides, in pertinent part, "the common parent of the group for all or any part of the year to which the notice or waiver applies" may act as "alternative agent" for the group. Treas. Reg. § 1.1502-77T(a)(4)(i). We think the fact that Interlake involved a tentative refund adjustment governed by Treas. Reg. § 1.1502-78 also distinguishes Interlake from the present case.